

## CONDITIONS OF TRADE

### 1. PURPOSE & APPLICATION

- 1.1. All Orders will be supplied, and all Quotations and tenders submitted by Bowens, will be subject to the terms of this Agreement and, accordingly, these Conditions apply to all current and future Orders.
- 1.2. If more than one person is the Customer those persons contract jointly and severally for themselves and each other.
- 1.3. Where the Customer as trustee of a trust incurs a liability for the Goods to Bowens the Customer will incur that liability personally as well as in its capacity as trustee.

### 2. GOVERNING LAW & AUSTRALIAN CONSUMER LAW

- 2.1. These Conditions are governed by and construed in accordance with the laws of Victoria, Australia.
- 2.2. Nothing in these Conditions is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other Law.
- 2.3. If any provision of these Conditions is invalid under the ACL or any other Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.

### 3. SUPPLY OF GOODS

- 3.1. Bowens and the Customer agree that Bowens will supply Goods to the Customer on an ongoing basis pursuant to these Conditions and any applicable Sales Order and successful Credit Application.
- 3.2. For the avoidance of doubt and in addition to any other rights of Bowens pursuant to these Conditions, Bowens may at its absolute discretion determine not to accept an Order.
- 3.3. The Customer is responsible for ensuring the accuracy of all specifications, details, sizes and quantities which form the basis of a Quotation or Order and Bowens does not accept any responsibility for any errors in such specifications, details, sizes and quantities. Bowens shall carry out the Order in conformity with the information supplied by the Customer.

### 4. PRICES

- 4.1. A Quotation will be valid for the period as stated in the Quotation, or where no such period is stated, the Quotation will be valid for 30 days only from the date of issue.
- 4.2. Quotations and Prices are exclusive of delivery costs, GST and all other taxes, duties or government charges levied in respect of the Goods except to the extent that they are expressly included in the Price or Quotation.
- 4.3. Quotations and Prices are based on the specifications, details, sizes and quantities provided by the Customer. If there is any variation in the Goods required due to a change or error in the specifications details, sizes and quantities provided by the Customer, Bowens reserves the right to vary the Quotation or the Price.
- 4.4. Where the supply of Goods has been agreed to by Bowens to be supplied over a set period of time, the price for the Goods supplied during this period will remain as agreed until such period of supply expires. In all other circumstances, Bowens reserves the right to pass on any increase in the cost of Goods to the Customer.
- 4.5. There is no right of set-off in respect of any claims against Bowens.

### 5. PAYMENT

- 5.1. Customers who are not Credit Account Customers must:
  - 5.1.1. Make payment of 50% of the Price upon the placement of the Order; the remaining balance of the Price is due five (5) Business Days prior to the Delivery Date set out in the Quotation or the Order.
  - 5.1.2. Failure to pay the balance in accordance with clause 5.1.1 will result in the delivery being delayed by one Business Day for every day the full payment is late.
  - 5.1.3. The delivery of the Goods will not be made until the Price is paid in full.
- 5.2. Credit Account Customers must pay the Price in accordance with the terms of their approved Credit Application or where no such terms are stated in the approved Credit Application:
  - 5.2.1. subject to any credit limit set out in the Credit Application, the Price will be payable by the Customer by no later than 30 days from the end of the month immediately following the month in which delivery of the Goods took place;
  - 5.2.2. if an Order will result in the credit limit set in the Credit Application being breached, subject to the written approval of the Credit Application continuing to apply to the Order regardless of the breach

of the credit limit by an authorised representative of Bowens, clause 5.1 will apply to the payment of the Price for such Order.

- 5.3. The Customer agrees to provide a retainer as requested by Bowens for expenses incurred by Bowens in the supply of an Order.

### 6. CUSTOMER REFUNDS/CLAIMS FOR CREDIT

- 6.1 Unless otherwise stated within these Terms & Conditions, Bowens will accept the return of regular stock lines for a refund or credit under the following conditions:
  - 6.1.1 Some products including custom made products, products cut to size, tinted paints and clearance items are exceptions and refunds/credits will not be given.
  - 6.1.2 Proof of purchase must be supplied.
  - 6.1.3 Cash sale refunds will be given in same tender type as the original purchase.
  - 6.1.4 Goods are returned in their original condition within 30 days from the date of purchase, delivery or pick-up.
  - 6.1.5 Original condition is defined as the condition in which the goods were sold. Where applicable, any packaging must be clean, undamaged, unopened and in a saleable condition.
  - 6.1.6 A restocking fee will be deducted from all refunds/credits for returned goods.
  - 6.1.7 Where pick up from site is required, a pick-up fee will also be deducted from the refund/credit.
  - 6.1.8 Any goods determined to be faulty may be replaced, repaired or refunded provided they fall within the individual manufacturer's warranty guidelines.
  - 6.1.9 Claims for overcharges must be lodged within 60 days from the month of invoice.
  - 6.1.10 SBI's (special buy-in) goods will not be refunded/credited unless a supplier credit can be obtained.
  - 6.1.11 All credits for SBI's will be subject to a re-stocking fee and if applicable, a pick-up fee.

### 7. CUSTOM MADE AND SPECIALITY GOODS

- 7.1. The Customer acknowledges that all Custom Made and Speciality Goods are supplied in accordance with the Customers drawings, designs and specifications, a copy of which will be annexed to the Acceptance Form.
- 7.2. The Customer acknowledges that all modifications made to the Custom Made and Speciality Goods by Bowens are done so at the instruction of the Customer.
- 7.3. In no circumstance, will Bowens be liable for the Custom Made and Speciality Goods inability to be fit for purpose due to incorrect or altered Customer drawings, designs, plans and specifications.
- 7.4. For Custom Made and Speciality Goods the Customer must place an Order for the Goods at a minimum of twelve (12) weeks prior to the desired Delivery Date.
- 7.5. Any reference by Bowens to projected Delivery Dates are indicative only and cannot be guaranteed.
- 7.6. The Customer acknowledges and agrees that Custom Made & Speciality Goods are tailored to the Customers specifications and accordingly the Purchase Price for Custom Made & Specialty Goods is non-refundable and cannot be returned.

### 8. INSTALLATION OF GOODS

Bowens does not install any Goods. Where Bowens arrange for the installation of Goods supplied to the Customer, the Customer must contract separately with the installer. Bowens will not be responsible for any installation of the Goods by a third party.

### 9. DEFAULT IN PAYMENT

- 9.1. Time is of the essence of this Agreement.
- 9.2. In the event of default in payment:
  - 9.2.1. Bowens may charge interest on overdue amounts at the rate of 18% compounded daily from the date of due payment until the date of payment in full of the overdue amount, plus interest.
  - 9.2.2. Bowens may charge an account keeping fee in the amount of \$5.00 per month until the Price is paid in full.

9.2.3. The Customer will pay to Bowens upon demand all costs and expenses incurred by Bowens as a result of the delay in payment.

## 10. TERMINATION

10.1. Irrespective of any other provisions of this Agreement, if the Customer cancels an Order of Custom Made and Specialty Goods or otherwise, this Agreement is terminated and as a result an Order of Custom Made and Specialty Goods is cancelled, the Customer will remain liable for payment of the full Purchase Price of the Custom Made and Specialty Goods the subject of the relevant Order.

10.2. If the Customer commits an Act of Default which is not remedied within 7 days of Bowens giving written notice of the Act of Default, Bowens may terminate this Agreement or place the Customer on stop supply until the Customer has remedied the Act of Default.

10.3. If Bowens terminates this Agreement pursuant to clause 10.2:

10.3.1. all amounts payable by the Customer to Bowens will immediately become due and payable notwithstanding that the due date has not arisen;

10.3.2. Bowens may immediately reclaim any advertising or point of sale material incorporating Bowens' Intellectual Property and the Customer grants Bowens an irrevocable licence to enter upon the Customer's Premises to reclaim such material without incurring liability to the Customer or any other person; and

10.4. If Bowens commits an Act of Default which is not remedied within 7 days of the Customer giving written notice of the Act of Default, the Customer may terminate this Agreement and obtain a refund of any amount of the Price already paid for Goods not supplied, less any other amounts due and payable to Bowens under this Agreement.

## 11. CANCELLATION

11.1. If the Customer cancels an Order the Customer will be liable for any expenses incurred or work performed by Bowens in relation to the Order unless the Customer receives written consent to the cancellation of the Order from Bowens.

11.2. If the Customer cancels an Order, Bowens will refund any deposit paid but may, before doing so, deduct any monies due under clause 11.1 from the deposit.

11.3. If Goods are returned by the Customer or an order is cancelled and Bowens are required to collect the Goods, it is the Customer's responsibility to ensure that the Goods are fit for trade.

11.3.1. If the Goods are not fit for trade, Bowens reserves the right to retain the value of the Goods from any refund of deposit to be made in accordance with clause 11.2;

11.3.2. In the event of cancellation and the return of Goods, the Customer will be charged a handling fee equivalent to a minimum of 15% of the Purchase Price.

11.4. If Bowens has reason to believe that it will be unable to supply an Order to the Customer within a reasonable time or at all due to circumstances beyond its reasonable control, Bowens may, without penalty, cancel the Order, in which case, Bowens will refund the Customer any amount of the Price already paid in respect of that Order.

## 12. RISK

Risk of loss and damage to the Goods passes to the Customer upon the Goods leaving Bowens Premises whether or not Bowens arranges delivery.

## 13. TITLE TO THE GOODS

13.1. Ownership of and title to the Goods remains with Bowens until the Customer has paid Bowens in full the Price and any other money that the Customer may owe to Bowens at any time on any account.

13.2. Until ownership of and title of the Goods passes to the Customer:

13.2.1. the Customer will not, without Bowens' consent:

13.2.1.1. make any alterations to the Goods or do or allow anything to happen to the Goods that might contribute to the deterioration in their value or otherwise adversely affect the interests of Bowens;

13.2.1.2. purport or attempt to sell or dispose of the Goods except in the ordinary course of its business;

13.2.1.3. charge, encumber or create a Security Interest in the Goods; and

13.2.2. the Customer will keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with the Goods.

13.2.3. Bowens may give notice in writing to the Customer to return the Goods or any of them to Bowens and, upon such notice, the Customer's right to obtain ownership or any other interest in the Goods will cease.

13.3. If the Customer supplies the Goods to any person before ownership of and title to the Goods passes to it, whether or not with Bowens' consent,

the Customer holds the proceeds of the resupply of the Goods on trust for Bowens and will pay the proceeds of sale to Bowens upon receipt.

13.4. If the Customer breaches clauses 13.2.1 or 13.3, Bowens may enter upon the Customer's Premises, or any other site, to repossess the Goods without incurring liability to the Customer or any other person, and the Customer grants Bowens an irrevocable licence to do so.

## 14. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

14.1. The Customer acknowledges and agrees that:

14.1.1. these Conditions constitute a Security Agreement for the purposes of the PPSA which creates a Security Interest in favour of Bowens in the Goods and in all present and after acquired property supplied by Bowens to the Customer (or for the Customer's account) until the Price has been paid for in full;

14.1.2. Bowens may, without notice to the Customer, register its Security Interest in the Goods, in all present and after acquired property and in their proceeds as a Purchase Money Security Interest on the Register; and

14.1.3. the Customer will do all things necessary to facilitate Registration of Bowens' Security Interest.

14.1.4. the Security Interest is not discharged nor the Customer's obligations affected by the administration of the Customer.

14.2. Where the PPSA applies to action taken by Bowens in relation to the Goods, the Customer waives its right to receive any notices required under sections 95, 118, 121, 130, 132 or 135 of the PPSA.

14.3. The Customer waives its rights under section 157 of the PPSA to receive a verification statement.

14.4. The Customer waives its rights under sections 96, 125, 142 and 143 of the PPSA.

## 15. DELIVERY

15.1. The Customer will elect to request delivery of the Goods in accordance with clause 17 or the Customer is to collect the goods in accordance with clause 16.

15.2. The costs of delivery of the Goods to the Customer are for the Customer's account whether or not Bowens arranges delivery.

15.3. Any time quoted for delivery or collection is an estimate only.

15.4. The Customer shall accept delivery or collect the Goods on the delivery date set out in the Quotation or Order or other such date as advised by Bowens (**Delivery Date**). The Customer shall be liable for any expenses incurred by Bowens by the Customer's non-acceptance of the Goods on the Delivery Date.

## 16. DELIVERY BY COLLECTION

16.1. In the event the Customer elects to collect the Goods from Bowens Premises, the Customer must collect the Goods on the date set out in the Order or, within two (2) days of the Customer receiving notice from Bowens that the Goods are ready for collection (**Notice of Collection**). If the Goods are not collected in accordance with this clause 16.1:

16.1.1. Bowens will charge the Customer a handling fee of 15% of the total order value; and

16.1.2. If the Goods are not collected within 10 Business Days of the Customer receiving the Notice of Collection, Bowens will accept the non-collection of the Goods as notification of a cancelled order and the Goods will be returned to stock.

16.2. If the Customer elects to collect the Goods from Bowens Premises. It is the Customer's responsibility to ensure the Goods are secured safely and in accordance with the applicable laws governing the transfer of Goods. Bowens accepts no responsibility for damage or loss incurred as a result of the Customer transporting the Goods.

## 17. DELIVERY TO SITE

17.1. It is the responsibility of the Customer to ensure clear access is provided to the Site, and should the Customer fail to provide clear access to the Site delivery shall be made as close to the Site as possible. Clear access areas are to comply with Work Safe Guidelines. Should delivery be deemed to be impossible or not compliant with Work Safe guidelines by the truck driver the Goods shall be returned to Bowens and re-delivery shall be scheduled by agreement between the Customer and Bowens. The Customer shall be liable for the additional delivery charges and extra expenses incurred by reason of their failure to provide clear access to the Site to facilitate delivery.

17.2. The Customer must inform Bowens of any Site that has overhead powerlines that lie within a 6.4 metre circumference of the Site. Any Site that has overhead powerlines within a 6.4 metre circumference of the Site shall require additional delivery services the cost of which the Customer will be responsible for. For the avoidance of doubt, the charges for any additional delivery services have not been included in the Quotation.

17.3. It is the responsibility of the Customer to organise a crane service where clause 17.4 applies to ensure safe delivery of the Goods in compliance with OHS regulations. The Customer is responsible for any additional crane charges.

17.4. All deliveries are quoted with one driver operating without a dogman. Should a dogman be required to facilitate the delivery to comply with OHS regulations then additional charges will apply and will be the responsibility of the Customer to pay for any additional dogman charges.

#### 18. INSURANCE

From the time the Goods leave Bowens Premises until title and ownership in the Goods passes to it, the Customer will maintain, at its own expense, comprehensive insurance over the Goods for their full insurable value, in the names of Bowens and the Customer.

#### 19. WARRANTIES

19.1. Bowens warrants that the Goods comply with the warranties included in any Warranty Document and any guarantees that apply compulsorily under the ACL.

19.2. Bowens warrants that the Goods are fit for purpose. To the extent permitted by Law, all other guarantees, warranties, undertakings, or representations expressed or implied, whether arising by statute or otherwise, which are not given in these Conditions or any Warranty Document are expressly excluded.

19.3. If the Customer is a Consumer and any Goods supplied by Bowens are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that Bowens' liability for a failure to comply with a consumer guarantee under the ACL in relation to those Goods (other than a guarantee under sections 51, 52 and 53 of the ACL) is limited, at the option of Bowens, to one or more of the following:

19.3.1. the replacement of the Goods or the supply of equivalent goods;

19.3.2. the repair of the Goods;

19.3.3. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

19.3.4. the payment of the cost of having the Goods repaired.

19.4. If the Customer is not a Consumer, to the extent permitted by Law, Bowens will not be liable in any circumstances for any:

19.4.1. loss or damage to any property or person whatsoever resulting from the provision of the Goods;

19.4.2. loss arising from delay in delivery; or

19.4.3. Loss.

#### 20. EXCLUSIONS

20.1. Except as expressly provided in these Conditions, Bowens excludes, to the fullest extent permitted by Law, all warranties, representations and conditions whether implied by law, trade, custom or otherwise.

20.2. In no circumstance will Bowens or its employees, officers or agents be liable, whether in tort, contract or otherwise for any indirect loss, loss of profits, Loss or special or exemplary damage suffered by the Customer or any other person, even if such loss or damage was foreseeable and whether or not Bowens has been advised of the possibility thereof.

20.3. Without limiting any other provision in these Conditions, to the extent permitted by law, in no event will the liability of Bowens exceed the amount of the Price paid by Customer for the relevant Goods.

20.4. To the extent permitted by Law, the Customer acknowledges that Bowens will not be liable to the Customer for loss or damage caused by:

20.4.1. any floor plan or site take off errors or omissions;

20.4.2. the Customer failing to properly maintain the Goods;

20.4.3. the Customer using the Goods for any purpose other than that for which they were designed;

20.4.4. the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

20.4.5. the Customer failing to follow any industry instructions or guidelines;

20.4.6. subject to clause 19.1 and 19.2 the Customer failing to properly safeguard the Goods from exposure to the weather; or

20.4.7. fair wear and tear, any accident, or a Force Majeure Event.

20.5. The Customer acknowledges that timber Goods of a particular trade description vary as to grain, colour hardness and other characteristics. The Customer acknowledges it is their responsibility to order sufficient quantities of the product in order to select and match the product.

#### 21. FORCE MAJEURE

Neither party will be liable for any delay or failure in the performance of any obligation or the exercise of any right under this Agreement or for any loss or damage if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event.

#### 22. INTELLECTUAL PROPERTY

All Intellectual Property of Bowens, including any developed during the supply of the Goods, is the sole property of Bowens.

#### 23. CONFIDENTIALITY

All information supplied by a party to the other party will be treated as confidential except to the extent that it becomes public knowledge, and will not be disclosed to a third party without the prior written consent of the party who originally supplied the information, or as required by law.

#### 24. VARIATIONS

24.1. This Agreement may be amended from time to time by Bowens amending the Conditions for legitimate business reasons upon written notice to the Customer.

24.2. If the Customer does not cancel its current Orders within 7 days of receiving notification of amendment under clause 24.1, the Customer will be deemed to have accepted this Agreement, as amended, and the amended Conditions will apply to all current and future Orders.

#### 25. PRIVACY POLICY

25.1. Bowens is an organisation bound by the Australian Privacy Principles and the Credit Reporting Code under the Privacy Act 1988 (Cth) (Privacy Act). A copy of the Australian Privacy Principles and Credit Reporting Code are both available from the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au).

25.2. Bowens' Privacy Policy and Credit Reporting Policy, as amended from time to time, are incorporated into this Agreement. A copy of the Privacy Policy and Credit Reporting Policy can be accessed on the Bowens website at [www.bowens.com.au](http://www.bowens.com.au).

#### 26. DISPUTE

26.1. If a dispute arises under this Agreement, the parties will attempt to negotiate a resolution by good faith negotiations.

26.2. If a dispute persists for more than 30 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.

#### 27. WAIVER

A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or another right.

#### 28. INTERPRETATION

Unless otherwise inconsistent with the context:

**ACL** means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

**Act of Default** occurs if either party: commits a material breach of these Conditions;

27.2 commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;

27.3 is subject to a resolution or an application for liquidation;

27.4 has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets; or

27.5 anything analogous to or having similar effect to any of the other events above arises.

**Acceptance Form** means any form issued by Bowens requesting the Customer's acceptance of these Terms and Conditions, Confirmation of the Goods ordered and for Custom Made or Specialty Goods annexes the drawings, plans and specifications for the Custom Made or Specialty Goods.

**Agreement** means the agreement between Bowens and the Customer for the ongoing supply of Goods as constituted by these conditions and any terms of credit agreed upon in writing by the parties;

**All present and after acquired property, Purchase Money Security Interest, Registration, Security Agreement, Security Interest and Verification Statement** have the meanings prescribed to them in the PPSA;

**Bowens Premises** means the place from which the Goods are despatched for delivery to the Customer;

**Business Day** means a day on which banks are open for business in Victoria but does not include, for the avoidance of doubt, a Saturday, Sunday or public holiday in Victoria;

**Consumer** has the meaning prescribed to it in the ACL;

**Credit Application** means an application by a Customer to purchase Goods subject to these Conditions on Credit;

**Credit Account Customer** means a Customer who has had a Credit Application with Bowens approved which remains current;

**Credit Reporting Information, Credit Eligibility Information, Personal Information and Sensitive Information** have the meaning prescribed to them in the Privacy Act 1988 (Cth);

**Customer** means the person (including a Corporation) or entity named as the customer in the Sales Order completed for the Customer's initial purchase of Goods under these Conditions, or any person or entity acting on their behalf;

**Customer's Premises** means any site owned, possessed, used or controlled by the Customer;

**Custom Made and Specialty Goods** means any product altered, varied or amended from the original manufacturer specifications on the request of the

Customer, including all Goods supplied by Ozone Panel (Aust) Pty Ltd ACN 603 050 022;

**Force Majeure Event** means any event or circumstances which is beyond the reasonable control of the effected party which results in or causes the failure of that party to perform any of its obligations under this Agreement;

**Goods** means goods and services specified in a Sales Order, including Custom Made and Speciality Goods;

**GST** has the meaning prescribed to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended);

**Intellectual Property** means all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such rights and interests;

**Law** means any relevant federal, state or local statute, ordinance, rule, regulation or standard, and includes the ACL, as amended from time to time;

**Loss** means any liability, including any loss resultant or consequential claim, damage, demand, injury or death, loss of anticipated savings or business opportunity and any penalty imposed by a statutory or other authority;

**Order** means an order by the Customer an Acceptance Form and as otherwise set out in the Sales Order for the supply of Goods pursuant to this Agreement, or as placed by the Customer in accordance with any other order process imposed by Bowens as advised to the Customer from time to time;

**Price** means the price specified in a Sales Order for the Goods and, unless otherwise agreed in writing, excludes delivery costs;

**Quotation** means any written quotation provided by Bowens for the provision of Goods;

**Regular Stock Line** means any product stocked at a Bowens store;

**Sales Order** means the document entitled "Sales Order / Tax Invoice" and which constitutes a Tax Invoice for the purposes of A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended);

**SBI's (Special Buy In product)** means any product manufactured to a customer's specifications. An SBI can also refer to a non-stocked product ordered/sourced specifically for an individual customer.

**Site** means the location specified in the Quotation or Order where the Goods shall be delivered or, if no such location is specified in the Quotation or Order, the location where the Client requests in writing that the Goods be delivered;

**Warranty Document** means any document referred to in a Sales Order or provided with the Goods or Services in which Bowens gives a warranty in relation to the Goods or Services; and